

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER D. HETTINGER and PDH
ASSOCIATES, LLC,

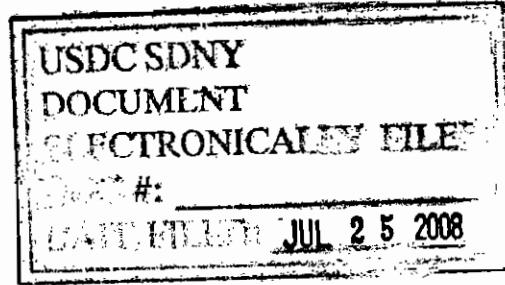
Plaintiffs,

-v-

No.08 Civ.6466 (LTS)(HBP)

NOAL KLEINMAN, REID KLEINMAN,
and ALPHA BEAUTY DISTRIBUTORS,
INC.,

Defendants.



ORDER

WHEREAS, this action was commenced by the filing of a Complaint on July 21, 2008; and

WHEREAS, the Court has reviewed the Complaint to ascertain the basis for assertion of subject matter jurisdiction in this court; and

WHEREAS, such Complaint asserts that the Court has jurisdiction based on diversity of citizenship (28 U.S.C. § 1332), but diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) requires a demonstration that the action is between citizens of different states and, with respect to the individual parties, the Complaint alleges merely that they reside at various locations; and the pleading of jurisdictional facts is deficient with respect to Plaintiff PDH Associates LLC, because an LLC's citizenship is the same as that of each of its members, *Strother v. Harte*, 171 F. Supp. 2d 203, 205 (S.D.N.Y. 2001), and the Complaint fails to allege the citizenship of the members of the plaintiff LLC; and

WHEREAS, "subject matter jurisdiction is an unwaivable *sine qua non* for the exercise of federal judicial power," *E.R. Squibb & Sons v. Accident & Cas. Ins. Co.*, 160 F.3d 925, 929 (2d Cir. 1998) (citation omitted), and Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action;" it is hereby

ORDERED, that plaintiff shall, no later than **August 8, 2008**, file and serve a Supplement to the Complaint containing allegations sufficient to demonstrate a basis for subject matter jurisdiction in this Court or otherwise show cause in writing as to why this case should not

be dismissed for lack of subject matter jurisdiction.

Dated: New York, New York
July 25, 2008



LAURA TAYLOR SWAIN
United States District Judge